

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, January 26, 2000, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Steve Duvall, Linda Hunter, Gerry Krieser, Patte Newman, Tommy Taylor, Greg Schwinn and Cecil Steward (Russ Bayer and Barbara Hopkins absent); Kathleen Sellman, John Bradley, Ray Hill, Mike DeKalb, Steve Henrichsen, Jennifer Dam, Rick Houck, Nicole Fleck-Tooze, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Vice-Chair, Greg Schwinn, called the meeting to order and requested a motion approving the minutes for the meeting held January 12, 2000. Motion to approve made by Duvall, seconded by Krieser and carried 6-0: Duvall, Hunter, Krieser, Newman, Taylor and Steward voting 'yes'; Schwinn abstaining; Bayer and Hopkins absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

January 26, 2000

Members present: Duvall, Hunter, Krieser, Newman, Taylor, Schwinn and Steward; Bayer and Hopkins absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3224; COUNTY SPECIAL PERMIT NO. 175, COUNTRYSIDE ESTATES 1ST COMMUNITY UNIT PLAN; COUNTY PRELIMINARY PLAT NO. 99029, COUNTRYSIDE ESTATES 1ST ADDITION; SPECIAL PERMIT NO. 1817; FINAL PLAT NO. 99047, VINTAGE HEIGHTS 6TH ADDITION; AND COUNTY FINAL PLAT NO. 99050, HILLTOP ESTATES 1ST ADDITION.**

Nothing was removed from the Consent Agenda.

Steward moved to approve the Consent Agenda, seconded by Krieser and carried 7-0:

Duvall, Hunter, Krieser, Newman, Taylor, Schwinn and Steward voting 'yes'; Bayer and Hopkins absent.

CHANGE OF ZONE NO. 3209
FROM I-1 INDUSTRIAL TO R-3 RESIDENTIAL
AND FROM I-1 INDUSTRIAL, B-1 LOCAL
BUSINESS DISTRICT AND H-4 GENERAL
COMMERCIAL DISTRICT TO P PUBLIC USE
ON PROPERTY GENERALLY LOCATED
ALONG WEST VAN DORN STREET IN THE
VICINITY OF HIGHWAY 77 (SALT VALLEY ROADWAY)
AND SOUTH FOLSOM STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Planning staff recommendation: Approval.

Steve Henrichsen of the Planning Department advised that this is one of three applications that was before the Commission in November of 1999.

This application deals with the property north of Van Dorn, east of the Burlington Northern railroad tracks in the vicinity of the Hwy 77 interchange. Roy Welding Service was previously included in this change of zone. After discussions with Ruel Roy, the staff is revising its recommendation to exclude the I-1 property occupied by Roy Welding from this application, which is less than one acre. His property would remain I-1. That area being excluded also includes a little bit of the adjacent Burlington Northern railroad tracks which we believe Roy Welding is probably occupying as well as adjacent property to the west which he is looking to purchase. The reason the staff is excluding his property is that it is more than 200' from any residential zoning, and the residential zoning within 200' is in use as a detention pond. Given the small size of the site and its distance to residential uses, the staff is recommending to leave that as an I-1 area and recommend approval of the change on the remainder of the property.

Steward wondered whether there is any purpose or possibility to put any text on this zone change in the event that the use of that property changes. Henrichsen advised that there is no way to put any text conditions on a change of zone. The staff could certainly take into consideration any language the Planning Commission wishes to include for consideration in the future.

Steward believes it is strange to have this parcel zoned separately from the adjacent property in perpetuity.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Duvall moved approval, seconded by Newman and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

**CHANGE OF ZONE NO. 3210
FROM R-3 RESIDENTIAL TO AGR AGRICULTURAL
RESIDENTIAL, AG AGRICULTURAL AND P PUBLIC
ON PROPERTY GENERALLY LOCATED
ON BOTH SIDES OF CODDINGTON AVENUE
SOUTH OF WEST VAN DORN STREET.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Planning staff recommendation: Approval.

Steve Henrichsen of Planning Department advised that this is the third of three changes of zone along West Van Dorn area being proposed by the Planning Department. Change of Zone No. 3196, at the intersection of Van Dorn and Coddington, dealt with the three properties that were zoned B-1 and it was recommended that those properties be converted to B-2 being in the Capitol View Corridor with the existing Lee's Chicken and Dairy Queen. For the adjacent property in this change of zone, the main opposition previously stated in November had to do with this property currently zoned R-3 being part of a larger proposal to change that R-3 to AG. The proposal in November included three acres which was part of a larger 4.5 acre lot, which was previously part of the larger parcel owned by the State of Nebraska for use with the Regional Center and had been declared surplus and the 4.5 acre parcel was sold to Stockwell Properties L.L.C.

This change of zone was postponed; the staff had a subsequent meeting with David Hunter and Don Linscott and has removed the request for the 3 acres owned by Stockwell Properties from the proposal from R-3 to AG. The Stockwell Properties property is no longer part of this change of zone in the staff recommendation. Linscott and Hunter are still looking to include this property in a commercial district in the future. The staff continues to recommend that the adjacent property be zoned B-2 and that their application would be considered separately and on its own merits. The City owns the property for the Bison Trail; the remainder of the property east of Coddington is owned by the State; there are three parcels on the west of Coddington which are owned privately with the front 150' of those three lots zoned R-3, and the remaining being zoned AGR. All three of the

property owners on the west side are all in favor of the AGR zoning. The west side of Coddington would go from R-3 to AGR; the east side of Coddington would go from R-3 to AG; the property south of the tracks owned by the Regional Center would be zoned P Public.

Hunter noted that the property south of West Calvert is zoned R-3. The property west of Coddington and north of W. Van Dorn is zoned R-3. Basically all the property in this whole area is R-3. Why are we trying to convert this to AG? Henrichsen pointed out that the property north of W. Van Dorn is zoned R-3 but is going into the typical R-3 residential use. In general, there will be a pattern of R-3 urban lots north of Van Dorn. West of Coddington there are a lot of three acre lots almost all of which are zoned AGR. To the south of Calvert there is quite a bit of R-3 zoning, and a lot of that has already been split into 3-acre lots. This particular parcel was included because a lot of discussion has occurred in this area since Roper Elementary has opened and the plats have come forward. There is a lot of interest in splitting this property into urban lots. This area is outside of the future service limit and cannot be provided with sanitary sewer or water service. Thus, it is not appropriate to split this property into smaller lots as has been done to the north.

Hunter believes that water service can reasonably be supplied to this area. Henrichsen concurred that there is a water main in West Van Dorn Street. Hunter also believes that sewer could be done. Henrichsen agreed that in the R-3 district they could come forward with a septic proposal and three-acre lots. Staff takes the position that this is an area in the future that may be considered for urban uses and not for having septic systems. For those reasons the staff is proposing that the AG zoning would still allow a future private property owner to have AG uses and some of the special permitted uses, i.e. garden center, as a transitional use to some potential future use such as urban residential that is much further down the road.

Schwinn asked the staff to explain some of the ramifications of the Capitol View Corridor. Henrichsen explained that there are two different types of Capitol impacts. The Capitol Environs District is in the ordinance and has some very specific height restrictions for that area around the state Capitol. Capitol View corridors are identified in the Comprehensive Plan but have no standing in the zoning ordinance. It is just through the underlying zoning that we may address any potential impact on the views toward the Capitol. The concern with B-1 was the higher height limit and potential for off-premise signs which could have obstructed those Capitol View Corridors from Pioneers Park. The City has now purchased the land for the Bison Trail which is also in the view corridor. The more important reason for R-3 to AG has to do with the lack of urban services and that it is outside the future service limit.

Newman inquired about what could be put in with the R-3 on the three or four acres that they could not have with AG. Henrichsen explained that under AG, they could do one single family dwelling; under the R-3 they could do duplex. The other possibility is looking

to see if they can actually serve a little bit of frontage along W. Van Dorn with sewer and include the entire property in the city limits. That would have to come through a separate change of zone.

Opposition

1. **Lynn Darling**, S.W. 23rd, testified in opposition. She was told by Mr. Linscott that there is a 50' setback. If this is true, will they be able to keep that beautiful avenue of the pines as the corridor to Pioneers Park, or can they gut that and strip it and just put in more houses which would be right up next to Pioneers Park? Can't we keep something beautiful in our city? Can't we keep this lovely spot? If it is allowed to be developed, at least say "hands off" of the trees. We have pretty much chopped up all the other areas around here and this is the only spot we really have left with some beauty and some history. With the Bison Trail, we need to keep it as a lovely spot for the trail. Darling was referring to the pines on the south side of W. Van Dorn and on the east side of Coddington, plus the fact that that whole area is very, very much in the wetlands and floodplain. She called FEMA in Kansas City and she learned that the Lincoln office does not determine what is in the floodplain and what is not. This is a FEMA decision.

Hunter noted that the Stockwell Properties property is not currently being discussed with this change of zone. Darling should bring her comments back at a point in time when there is some sort of proposal. Darling is still concerned with the southeast corner that the Hunter/Linscott people own that could be gutted, stripped and filled in.

Response by the Applicant

Henrichsen advised that there are mature pine trees along W. Van Dorn on the south side and both sides of Coddington leading down into the entrance to Pioneers Park. There is concern about retention of those trees as part of the character of the area. The change of zone does not address the trees. The change of zone has more to do with the underlying property. Even under AG, the property owners would have the ability to remove those trees if they are on private property.

Don Linscott testified that they have been meeting with the Planning Dept. to discuss this property. He has met with the neighbors and they were trying to work out some arrangements before coming back forward. He did talk with the neighbors about the trees. They will have another meeting with the neighbors before they come forward with their change of zone. He did request that this particular change of zone not include the Stockwell Properties property.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 26, 2000

Duvall moved approval of the revised staff recommendation, seconded by Hunter. Duvall likes downzoning. Motion for approval carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

CHANGE OF ZONE NO. 3225
FROM R-3 RESIDENTIAL TO O-3 OFFICE PARK
AND FROM O-3 OFFICE PARK TO R-3 RESIDENTIAL

and

USE PERMIT NO. 126,
WILDERNESS WOODS OFFICE PARK,
FOR A 275,000 SQ. FT. OFFICE PARK
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND YANKEE HILL ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Planning staff recommendation: Deferral until a Transportation Improvement Agreement has been reached with the Public Works & Utilities Department.

Proponents

1. Danay Kalkowski appeared on behalf of the applicants. The use permit and change of zone for Wilderness Woods Office Park, is part of the Wilderness Ridge golf course development that was approved by Council in July, 1999. This makes minor adjustments to the site plan. The generic use permit includes 275,000 sq. ft. of office space. The use permit shows the building envelopes and square footages for the proposed buildings. At the time that there is a specific user, there will be request for an administrative amendment to show the parking, landscaping and exact building location. The use permit shows retention of the natural drainageway and a 100' vegetated buffer through the office park; the site plan also shows natural plantings being added as a buffer along the drainageway to slow stormwater runoff. The use permit does not cause loss of flood storage volume.

Kalkowski noted that the staff has recommended deferral until a transportation agreement has been reached with Public Works. She advised that the applicants have met with Dennis Bartels twice. As a result, she proposed three new conditions to address the traffic improvements. Dennis Bartels has reviewed these proposed additional conditions and has indicated that they are acceptable in addressing the traffic issues.

In addition, Kalkowski requested an amendment to add Condition #2.1.7 to clarify that sidewalks will be built on the internal road, deleting the original Condition #2.1.7 which would have reduced the height to 35 feet instead of allowing the 40 feet allowed by the

zoning. The developers are providing a substantial screen and have intermittent berming along the west side with cedar trees on top that provide helpful screening. They desire to use the additional height, if necessary, to allow more open green space within the development. She believes this amendment is also acceptable to the staff.

Kalkowski reported that the applicant has met with the neighbors. There were no concerns and the neighbors were generally complimentary.

This plan complies with the approved preliminary use permit; it implements many principles of the S1/S2 subarea plan, i.e., preservation of natural drainageway; use of best management practices; preservation of wetlands; and no net loss of flood storage volume along the drainageway.

Kalkowski reiterated that the proposed amendments address the traffic issues to the satisfaction of the Public Works Department.

Steward inquired whether the potential of going to the 40' height means an additional story in some of the buildings. Kalkowski responded that the two-story office building would fit within the 35', so there is the potential that they could go from two to three stories.

In regard to preserving the natural drainageway, Steward noted that it appears on the site plan that the configuration of the drainageway has been engineered; that is, that the edges have been straightened and channeled. Does this mean removal of the natural vegetation in order to channelize the drainageway? Roger Severin of Olsson Associates advised that that channel was straightened in the early 1970's, possibly the late 1960's. There is relatively mature cottonwood growth so they are actually preserving it exactly as it exists today. Yes, it was engineered 30 years ago but it has not been changed since then. They will maintain the cottonwood trees.

Hunter asked whether the 100' width conforms to the depth requirements that were passed recently. Kalkowski stated that the 100' buffer complies with the S1/S2 subarea plan.

Taylor wondered what type of vegetation is being planted close to that 100' area. Kalkowski advised that the additional vegetation will be natural plantings to help control the stormwater runoff for better water quality control.

There was no testimony in opposition.

Steward asked staff to respond to the height increase. Steve Henrichsen of Planning staff responded, stating that it is probably nearly 1/4 mi. from the edge of the use permit to the physical boundaries of Wilderness Park. The site plan had reflected one- and two-story

buildings so it appeared that they were going to do the lower buildings. The staff report had reflected the height limit of 35' to reflect what the site plan showed. Subsequently, the applicant talked about plans for more than a two-story building because they would be able to cover less of the site and decrease the amount of fill. By allowing the height up to the height limit, it provides the ability for less fill and more open space. Given the fact of the distance and some of the positive benefits by increasing the height, staff is not opposed to the O-3 height limitation.

By approving this site plan, Steward wanted to know if we are assuring the footprint condition so that we don't end up with both the height and the coverage. Henrichsen agreed that there would be nothing in the plans that would prohibit several three-story buildings and covering the remaining area with parking.

Taylor asked whether this meets with some of the concerns we have had in terms of the waterway, with the vegetation along the waterway to prevent flooding and not contribute to any flooding. Henrichsen believes that in general, the existing drainageway and trees are being preserved as a part of this plan. Most of those trees are outside the area of the use permit. The use permit does reflect, however, that those trees remain and they are adding some native trees, shrubs, plants and grasses along that natural drainageway as part of the use permit. Nicole Fleck-Tooze of Planning staff stated that all requirements have been met for stormwater detention with the plat. The drainageway and 100' corridor are very much in concept with the proposed stormwater ordinance changes. They are proposing to retain the existing vegetation and provide additional native plantings.

Newman inquired as to when Yankee Hill Road is going to be paved between 14th and 27th. Buff Baker of Public Works stated that it will be paved in the near future. Public Works does have those concepts.

Response by the Applicant

Kalkowski reminded the Commission that on a development like this, they are allowed .25 FAR and the plan proposed to date is about .17. They assured that this developer intends to use less density than is allowed.

Steward has a concern about the increase in height potential. He asked Kalkowski what it does to the developer to maintain the 35' height. At this point in time, Kalkowski agreed that it would do nothing; however, it leaves open the flexibility. The use permit allows the 40' height. They are not asking to exceed the minimum requirements. Steward's concern is that the Commission was led to believe in the original approval of the subdivision that it would be two-story buildings with bermings, generous setback and less coverage because of the sensitivity and adjacency to the park. It bothers him that we now get creeping change to those understandings. On the one hand, he does not want to jeopardize the feasibility of the project but, on the other hand, he prefers to be religious and stick to what we thought were good environmental principles. Kalkowski's response was

that the applicant did prepare lines of sight from the building to the parking areas. The berming substantially covers the buildings that are there. She is not sure an individual will be able to notice the 5' difference in height. Steward believes it is one-story difference as opposed to 5' difference.

Public hearing was closed.

CHANGE OF ZONE NO. 3225

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Steward moved approval, seconded by Duvall, and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

USE PERMIT NO. 126

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Duvall moved approval, with conditions, with the amendments as requested by the applicant. Motion fails for lack of a second.

Steward moved approval, with conditions, with amendments as requested by the applicant, except that Condition #2.1.7 not be deleted and remain intact, seconded by Hunter.

Steward commented that there was a general understanding when this came through during the plat process. This use permit seems to come forward with the potential of changing that understood specific direction that the development would take. He clearly recalled that it was indicated that we were talking about two-story developments in the area. We didn't necessarily discuss the ground coverage, but the zoning opportunities and FAR were clear. He is in favor of sticking to the general original understanding.

Schwinn echoed Steward's comments. If they need to change the height, then they can come forward with an amendment. We should stick with the original until they have a specific proposal. Steward agreed, and at that time there is opportunity for sight line presentations and general impact analysis. It is just too arbitrary at this moment.

Motion for conditional approval, with amendments as requested by the applicant except that Condition #2.1.7 is not deleted and remains intact, carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Hopkins and Bayer absent.

Note: This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk with 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 3231

**FROM R-3 RESIDENTIAL TO R-4 RESIDENTIAL;
SPECIAL PERMIT NO. 1820 FOR A DOMICILIARY**

CARE FACILITY AND ELDERLY HOUSING;
and
SPECIAL PERMIT NO. 1821
FOR AN EARLY CHILD CARE FACILITY
ON PROPERTY GENERALLY LOCATED AT
NORTH 24TH & DODGE STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Planning staff recommendation: Deferral; revised to approval of the change of zone and conditional approval of Special Permit No. 1820 and Special Permit No. 1821 on January 26, 2000.

Steve Henrichsen of Planning staff submitted a memo of a meeting between the applicant and staff, which resulted in an agreement to widen the bike trail on the east side of this project and to connect the portion of the parking lots to that bike trail to allow emergency vehicles to gain access to the bike path. With that revision to the site plan and grading plan, the Fire Dept. now recommends approval. Although we need a revised grading plan, Public Works also agrees.

Therefore, Henrichsen revised the staff recommendation on the change of zone from deferral to approval of the change of zone and conditional approval of the Special Permit No. 1820, with amendment to Condition #1.1.7.

Proponents

1. Michael Rierden appeared on behalf of the applicant. These two properties are two of the three pieces to solve the use of a difficult piece of ground. Back in August, this particular proposal for townhomes was before the Commission and it was approved by the Planning Commission. The neighbors to the west, Landon's Addition, wanted the link of Old Dairy Road and Dodge that would go out onto 27th Street. The developer has agreed to do that and they had requested that that plan be put on hold before going on to City Council awaiting these two proposals.

The day care will be next door to Campbell Elementary. The whole use of the different types of uses blend well together. The difficult part about this property is that the surrounding uses are predominantly high intensity commercial/industrial. They have worked with Landon's for some period of time and Rierden submitted a letter dated January 12, 2000, from Robert Hackwith as President of Landon's Neighborhood, lending their support, which is contingent upon the construction of the roadway. The applicant has committed to build that road. They have done the grading and the utilities are in. They are just waiting for the right kind of weather for the concrete.

Rierden agreed with the staff recommendation and conditions of approval, including the amendments as submitted today.

There was no testimony in opposition.

Steward noted the Fire Dept. concerns, but the staff report does not mention the Police Department concerns about traffic and the child care facility. Henrichsen noted that to be addressed in the staff report for child care. The staff believes that North 24th would function as a collector and most of the traffic would be using Superior Street. Some people might be stopping at Campbell and then the Day Care so they may come down Dodge Street; however, we probably already have that situation to a certain degree. Staff also believes that in terms of traffic impact on Superior, the multiple commercial uses in the area have far greater impact than this child care center would. This is convenient to the commercial district without being right in the center. There are two means of egress back to Superior Street.

Newman noted the applicant's request for a 5' setback. Henrichsen pointed out that Condition #1.1.1 changes that 5' setback to a 25' setback and they will be required to comply with this condition if this is approved.

Public hearing was closed.

CHANGE OF ZONE NO. 3231

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 26, 2000

Duvall moved approval, seconded by Krieser. Newman believes this is a perfect example of how something should be done off an arterial street. She thinks it is a very good project.

Motion for approval carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

SPECIAL PERMIT NO. 1820

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 26, 2000

Duvall moved approval, with conditions, as revised, seconded by Hunter and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

SPECIAL PERMIT NO. 1821

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 26, 2000

Duvall moved approval of the Planning staff recommendation of conditional approval, seconded by Newman and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

CHANGE OF ZONE NO. 3233
FROM R-3 RESIDENTIAL TO R-4 RESIDENTIAL
and
SPECIAL PERMIT NO. 1828
FOR ASSISTED AND UNASSISTED RETIREMENT
FACILITIES ON PROPERTY GENERALLY LOCATED
AT FLETCHER AVENUE & TELLURIDE DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Planning staff recommendation: Approval of the change of zone and conditional approval of the special permit.

Steve Henrichsen of the Planning Dept. submitted revised conditions of approval.

With regard to Condition #1.1.1, Henrichsen explained that the subject project has three streets along the sides plus Telluride Circle through the center. In discussions with the applicant, a compromise was negotiated in regard to setbacks and revised reduced setbacks along all various streets. The R-3 has a 20' front yard setback, with the R-4 having 25'. With Condition #1.1.1 they will provide the 20' setback along Telluride Dr. and No. 23rd, similar to the properties on the other side of the street. There would be a 15' setback internally along Telluride Circle where there is the day care and elderly and domiciliary on both sides of the street. Condition #1.1.5 increases the landscape screen as part of reducing that front yard setback. Henrichsen requested to further amend the conditions to provide that anytime the building was greater than 35', the intent was that that portion of the building greater than 35' had a greater setback. This is similar to what was done with Savannah Pines at 40th & Pine Lake Road. The setback along the eastern property line will be 30', which is Outlot C, a wetlands area. This is the standard from Game and Parks as appropriate setback to a wetlands area.

Staff agrees to allow the setback of 20' for the child care center as shown on the plan given that Fletcher Avenue is 120' right-of-way rather than 100'.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant and agreed with the conditions of approval, as amended.

There was no testimony in opposition.

Public hearing was closed.

CHANGE OF ZONE NO. 3233

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Duvall moved approval, seconded by Newman and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

SPECIAL PERMIT NO. 1828

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Duvall moved to approve the Planning staff recommendation of conditional approval, as revised and amended, seconded by Krieser and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

SPECIAL PERMIT NO. 1649A

**TO ADD WIRELESS COMMUNICATION ANTENNAE
ON A ROOFTOP ON PROPERTY GENERALLY
LOCATED AT SOUTH 48TH AND RANDOLPH STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Planning staff recommendation: Conditional approval.

Proponents

1. **Ken Weber** appeared as consultant representing **Nextel Partners**. This will provide antennae on the rooftop of the penthouse of Prescott Hall at Tabitha. The original proposal of staff was to provide screening around the antenna bases, and they have since agreed to provide screening around the entire perimeter of the penthouse. The objective is to minimize the impact on the neighbors.

Weber offered an additional update. Nextel has had discussions with Sprint PCS, which is also planning to share the cost of this special permit. Sprint will remove their obvious antennae on the rooftop up on the penthouse so that they will also now be behind the screening.

Duvall inquired about the screening material. Weber advised that the screening feels like Styrofoam. It is made by a company in Ohio with a market representative here in Lincoln. It comes in 4x8 ft panels and can be textured and painted to match. It is called a concealment panel.

Nextel wants to launch a network across Iowa and Nebraska. They are targeting to offer their services as of March 1st.

There was no testimony in opposition.

Hunter does not see the requirements for removal in the conditions. Jennifer Dam of Planning staff advised that the new wireless telecommunications ordinance takes effect February 1st. She did not add removal as a condition on this special permit; however, it could be added by the Commission.

Dam also suggested that there is not a set amount for a bond for removal. The condition could state that prior to building permits, the permittee post a surety to be approved by the Law Department in an amount determined by Planning to be sufficient to guarantee the removal. As far as term limit, a condition could be added to provide a term limit of 15 years, which would comply with the provisions in the new ordinance.

Hunter wondered why they couldn't just incorporate the conditions of the new ordinance. Dam explained that this is a rooftop mount and it will be concealed. Rick Peo, City Law Department, does not believe the two ordinances are the same. The process adopted that goes into effect February 1st is an administrative permit procedure. This particular special permit would fall under the broadcast tower requirements. The Commission needs to add specific requirements if they want to require the bonding and removal.

Schwinn wondered why these conditions were not included in the staff report. Dam explained that the antennae are different than the monopole or the lattice towers. Those are the ones we have more concerns about bonding and removal. The antennae could easily be removed in the future if they were abandoned. Dam suggested that the Commission could also add an abandonment condition that if the operation ceases for a 90 day period, the antennae would be considered abandoned.

Steward wonders if we don't get into some different territory. Legally, the antenna is on private property. We're approving it from a use standpoint to protect the height in the general area, but once the private owners agree to allow it to be put there, it should perhaps be their concern and not ours. Dam noted that the new ordinance does have a condition for removal on areas that are private property.

Dam also pointed out that this application amends an existing special permit, which does not have the bonding or removal requirements.

Hunter believes the spirit of what we're trying to accomplish is that 10-15 years from now we don't have a bunch of equipment all over the city that is not used. She thinks there is a value in making sure that we keep things cleaned up along the way.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 26, 2000

Duvall moved approval, with conditions, seconded by Taylor.

Hunter moved to amend to require the permit to expire after 15 years, and that there be a bond posted for removal satisfactory to the Planning Department if abandoned for 90 days, seconded by Steward.

Duvall commented that this talks about private property and yet we have a public agency talking about requiring removal. He thinks it gets complicated. Steward is operating on the assumption that if we were beyond February 1st, the new ordinance would have been applied to this application and all we're trying to do now is be sure that this one conforms to what we have already concluded to be a general city policy.

Hunter suggested that if the issue of the tower itself was not a city issue it would not be before the Planning Commission now. It is our business.

Motion to amend carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

Main motion for conditional approval, as amended, carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

Note: This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 1826
FOR A DOMICILIARY CARE FACILITY
AT 4444 SOUTH 56TH STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Planning staff recommendation: Denial.

Ray Hill of Planning staff submitted a late report from the Parks Department, pointing out the variety of trees for the street trees and the request for a revised landscape plan. He also submitted four letters in opposition with concerns about delivery trucks, traffic, and access to 57th Street.

Proponents

1. **Michael Rierden** appeared on behalf the applicant and requested that this matter be

placed on pending for two reasons. As can be seen from the letters in opposition, the applicant is kind of between a rock and a hard spot. The neighbors do not want access out on 57th Street and the applicant is not proposing that. However, Public Works has concerns about access out on 56th Street.

Rierden noted that the correspondence also has concern as well as staff as to the current design of the building. Rierden stated that his client would like the opportunity to work with staff and with the neighbors to address these two concerns. He did meet with the neighbors some time back and did tell them that he would be requesting a continuance.

Opposition

1. Jodi Schulz, homeowner along 57th Street, testified in opposition. There is already too much traffic. There will be more traffic due to the staff for this facility and people visiting the residents. There will be semis coming down the street for deliveries. Emergency vehicles will be coming down the street, as well as the service trucks, i.e. garbage. There are 12 children from newborn through 9 years of age that live in this neighborhood. The children are going to be outside and it will be a traffic hazard. There are five teenagers who also live in this area. If they have the entrance off 57th, they will need to change the site plan and the homeowners will have to deal with the street lights. Several of the

houses have bedrooms that face 57th Street. The elderly themselves might be driving so they will be dealing with that. Will this impact their property values negatively? Schulz submitted a petition with 33 signatures in opposition to the entrance off of 57th Street into this facility.

2. Amy Sall, neighbor on 57th, testified in opposition. She is concerned about the height of the building and she believes it will look out of place. She is also opposed to the entrance on 57th Street.

3. Nancy Schoen, 4530 So. 57th, testified in opposition. When one of the developers came to her home, he told her that it was a 45 bed facility, and last week at the neighborhood meeting they find it is a 56 bed facility. Things keep getting added that they did not know about up front. She is concerned about not being told everything.

Newman moved to place this application on pending, seconded by Duvall.

Steward expressed extreme concern for the dominance that this facility will have in what is a totally single family neighborhood. He is not as concerned about the traffic because it appears that all ingress and egress would be off of 56th Street, but if it generates any traffic on 57th he can understand the neighborhood's concern. He agrees with the staff that it seems it would be difficult to effect a fresh design to accommodate all the conditions, but he is in favor of waiting to see.

Motion to place on pending carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

ANNEXATION NO. 99018;
CHANGE OF ZONE NO. 3200;
PRELIMINARY PLAT NO. 99021; and
USE PERMIT NO. 123, LANDMARK CORPORATE CENTER,
ON PROPERTY GENERALLY LOCATED AT NO. 33RD
STREET AND FOLKWAYS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Planning staff recommendation: Approval of the annexation and change of zone; and conditional approval of the preliminary plat and use permit.

Jennifer Dam of Planning staff submitted a memo from the Lower Platte South NRD advising that they have not received a request concerning disposition of wetlands. They do have concerns about operation and maintenance of the stormwater detention structure at the northeast corner. They do not want the conservation easement placed on the property owners association. Dam noted that the comments of the NRD are consistent with Condition #1.1.11 of the staff report that requires a permanent conservation easement over the wetlands or that the wetlands be deeded to a conservation agency prior to final plats.

Proponents

1. Danay Kalkowski appeared on behalf of the applicant, **North 33rd L.L.C.** The area included in this development is north and south of the intersection of Folkways Blvd. and No. 33rd. The Superior Pointe Employment Center preliminary plat and change of zone were approved on the north 2/3rds of this property. This applicant acquired the south part of this property so that these applications are comprehensive and include both areas. This plat is an expansion of the preliminary plat previously approved for the north area. This is a request for 136,000 sq. ft. of retail, 204,000 sq. ft. of office and 751,000 sq. ft. of warehouse/industrial.

They have put restrictions on high traffic uses to address the traffic concerns raised by staff. The traffic improvements are addressed in the North 33rd Street Infrastructure Agreement, which is the culmination of two years of talks and negotiations between the city and 7 property owners up through this corridor to address the location of No. 33rd from Superior to Fletcher. The location of 33rd was moved to its present location to reduce impact upon existing wetlands in the corridor. The movement was a major undertaking and took the cooperation of all seven of the property owners and the city to result in the present

alignment. 33rd Street has been increased from a two lane to full four-lane urban section. The developers will pay for building 33' of paving and all right turn lanes at the intersections. Construction on 33rd will begin sometime early this spring with the road being completed early this fall. The Infrastructure Agreement also addresses annexation of the south part of this property as well as part of the Schworer property to the south to do 33rd Street by special assessment district.

Kalkowski went on to state that this development proposes some fill in the floodplain; however, the applicant has made efforts to reduce the amount of fill where possible. Parking lots, roads and green space will not be brought up to that area. The applicant has obtained a floodplain permit and 404 permit for grading to be done on the site. The applicant has been sensitive to the environmental issues, i.e. granting a conservation easement over wetlands areas in Outlots A, B and C, which is a significant portion of this site. They worked with the city to move 33rd to have less impact on the wetlands, although it increased the developer's cost of 33rd Street. There will be no development in the floodway. Most of the waivers being requested are consistent with those that were requested when the north portion was approved.

Kalkowski submitted a motion to amend the conditions of approval. They met with staff last Friday to go over the proposed amendments. Most of the amendments are clarifications or corrections and she believes they are acceptable to staff.

Kalkowski stated that the applicant believes this project will be unique and attractive to Lincoln. It will also be a great asset to have 33rd Street constructed for the city.

Steward inquired whether Kalkowski is in a position to give her clients' commitment on either the fee title or the conservation easement approach. Kalkowski believes they have had conversations with the NRD. The applicant intends to keep visiting with the NRD and if those negotiations don't go anywhere, they are committed to doing the conservation easement. The developer accepts the responsibility to protect the wetlands either through conservation easement or by deed to an agency like the NRD.

2. Don Linscott of North 33rd L.L.C concurred. They have worked hard to preserve the wetlands and the trees. This is a good entry point to Lincoln and with the way it is going to be developed, it will be very pleasing to come into Lincoln.

Steward asked whether the developer has taken into account or been aware of the NRD concern about the shifting channel in the proximity in the northeast corner of the site. Linscott agreed that they have had discussion with the NRD and they are very sensitive as to how they develop this area. There are conditions that were received from the NRD and they are working to comply in order to deed to the NRD.

There was no testimony in opposition.

With regard to the NRD concern about shifting the condition of Salt Creek in the proximity, Steward asked what we are doing to protect the floodway Nicole Fleck-Tooze of Planning staff responded. In the proposed development, the floodway is preserved within one of the outlots. She believes the NRD concern will be addressed with the agreement reached between the property owners and the NRD for the maintenance.

Public hearing was closed.

ANNEXATION NO. 99018

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Duvall moved approval, seconded by Hunter and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

CHANGE OF ZONE NO. 3200

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Duvall moved approval, seconded by Krieser. Duvall loves this complicated plan in that it has taken two years and a lot of up-front fees. He thinks it is tremendous.

Motion for approval carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

PRELIMINARY PLAT NO. 99021, LANDMARK CORPORATE CENTER

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Duvall moved to approve the Planning staff recommendation of conditional approval, with the amendments as requested by the applicant, seconded by Krieser and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

USE PERMIT NO. 123

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Duvall moved to approve the Planning staff recommendation of conditional approval, with the amendments as requested by the applicant, seconded by Krieser and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

CHANGE OF ZONE NO. 3220

**TEXT AMENDMENT REGARDING PERMITTED
SIGNS IN THE O-1, O-2 AND O-3 OFFICE DISTRICTS.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Mike DeKalb of Planning staff submitted a letter from the applicant requesting a 6-week delay for further analysis of the total sign package.

There was no other public testimony.

Newman made a motion to defer with continued public hearing and administrative action scheduled for March 8, 2000, seconded by Krieser and carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

**SPECIAL PERMIT NO. 228H,
AMENDMENT TO THE CAPITOL BEACH WEST
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT 252 W. LAKESHORE DRIVE.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

The applicant was not present.

There was no testimony in support nor in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 26, 2000

Taylor moved to deny, seconded by Hunter.

Hunter believes this area has enough inherent problems with some of the carport situations and garages and she sees no need to create more problems.

Motion to deny carried 7-0: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn voting 'yes'; Bayer and Hopkins absent.

**SPECIAL PERMIT NO. 1423C
AMENDMENT TO THE HIMARK ESTATES COMMUNITY UNIT PLAN,**

**ON PROPERTY GENERALLY LOCATED AT
SOUTH 84TH STREET AND OLD CHENEY ROAD.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Ray Hill of Planning staff submitted a letter from the Parks Department indicating their desire to preserve the 20' wide bicycle path through this area of the project.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant. This is a project that is proposed for the northeast corner of 84th and Old Cheney Road as part of HiMark Estates. The proposed access points are on Old Cheney with the main entrance east of Antelope Creek, connecting on both sides of Antelope Creek with an exit only at Old Cheney. This will be an attractive project with a entryway with manned security. This is an amenity that a lot of people are beginning to look for in apartment communities. There will be three different clubhouses, one which will have a pool with a sand beach type facility; the others will have exercise facilities which will be oversized to accommodate members of the surrounding HiMark Estates CUP. The buildings will be somewhat unique in that they will be two stories on either end with three-story center sections, with private entries to apartments. There will be a car wash within the complex for the residents; Internet access to each apartment; washers and dryers in each apartment; and full-sized enclosed balconies for each apartment. This will be a first class facility and will raise the level of rental units across the community.

Hunzeker noted that the staff is recommending denial. His concerns with the staff report come down to three areas: 1) access; 2) grading and drainage; and 3) aesthetic. With respect to access to the project, Hunzeker noted that the proposal shows two access points to Old Cheney with the main entrance being the eastern one, which is over 900' east of 84th Street. This is plenty of distance from 84th Street for a left-turn access off Old Cheney Road. The project involving the widening of 84th will improve that intersection at Old Cheney and will taper Old Cheney back to a two-lane section well before reaching their eastern entrance. The western access will probably become a right-out only when the city builds a median to channelize the intersection at 84th & Old Cheney. The developer simply wants an access point at the east entrance.

Hunzeker then referred to Condition #1.1.2, which requires them to provide vehicular access from this applicant's site to Lot 48, I.T. Lot 48 is the corner one-acre lot with a house on it. The developer does not object to providing an access to that site. However, the developer would propose to provide an easement from the west driveway to that property "for a single family dwelling only". Hunzeker does not know whether this is acceptable to staff or to the owner of the single family residence. The owner is concerned

that he will have only a right-in right-out, but the developer is concerned about access all the way through the entire site. The problem is that this amounts to placing the burden on this project to provide a way for the city to avoid having to pay this gentleman for taking his access. Frankly, it gives him, at best, very circuitous access through this developer's site. The developer of this project will allow this access for the single family use but not for commercial uses. The developer does not want to be required to give up access through the site for more than a single family home. They will cooperate with the owner of that home for access through that driveway or through this developer's site.

Condition #1.1.3 requires an access to 88th Street. The developer will be willing to provide a 25' access easement for vehicular access to South 88th Street, but is not willing to give up access to Old Cheney Road east of Antelope Creek (Condition #1.1.4). Old Cheney Road is shown as a rural arterial in the Comprehensive Plan, meaning that someday it could be upgraded to an urban arterial or some day there may be a need to channelize it. If that's the case, this will be an easement that will give access out onto 88th Street at some point in the future.

Condition #1.1.6 deals with the bike trail. This developer does not object to working with Parks to provide a 20' easement for a bike trail, but the developer does not like the placement of this condition such that it has to be done before going on to City Council. Hunzeker requested that Condition #1.1.6 be moved to Condition #3.4. Parks plans to bring the bike trail under 84th Street north of this property. They need to get a connection over to Old Cheney Road to connect through Vintage Heights, but there is no current plan to improve the box culverts under Old Cheney Road. Lynn Johnson of the Parks Department is agreeable to this change.

Condition #1.1.8 requires 40' setback between multiple family buildings and Lot 48 I.T. and other single family lots along 48th Street. This development is probably 100-150' at the nearest point from the multi-family buildings to the house on Lot 48. This developer will be providing substantial landscaping and, in addition, a wall between those two uses. He does not believe that the neighbor is objecting to this setback and he knows the owners of the single family lots along 88th Street are not objecting to this setback because those lots are also oversized. Hunzeker requested that Condition #1.1.8 be deleted.

Condition #1.1.17 speaks to the 100-year floodplain. Hunzeker purports that this is not a designated floodplain. The FEMA flood maps do not go east of 84th Street. This developer is providing elevations and limits of a 100-year storm along an open channel in accordance with the language of the subdivision and zoning ordinance. They are proposing to place fill in areas which would otherwise be inundated by a 100-year storm at their present elevations; however, they are leaving open a channel which will be adequate to convey a 100-year storm pursuant to their engineering calculations. Hunzeker believes that Public Works has reviewed their calculations and is comfortable. They have provided adequate detention because it was calculated into the original CUP; they are providing additional detention on this site. Hunzeker requested that Condition #1.1.17 be deleted. All of the

rest of the conditions relative to grading and drainage are acceptable.

Condition #1.1.19 requires the developer to add street trees to the landscape plan. Hunzeker has no problem with that; however, this condition also requires identification of trees that will be removed. Hunzeker requested that the word "removed" be changed to "retained". He submitted a letter from a landscape architect who has walked the site and concludes that many people would call a majority of the trees on this site weed trees or junk trees. This is a site that is full of the type of vegetation which most people would not like to have in their yards. They will be replanting and reforesting this site with good vegetation.

Condition #1.1.20 and Condition #2 refer to the maximum of 240 units versus the 300 that this applicant is requesting. The original CUP provided for 240 but it was on a smaller area. This proposal is under the density which is allowable in the cluster areas in a CUP. The overall density of the HiMark CUP is way under the maximum and he believes that 300 is reasonable on a 20-acre site. There are no waivers being requested but they are simply asking to do what is allowable under the CUP.

Condition #1.3 refers to the 404 permit. Hunzeker requested that this condition be moved to Condition #3.5 so that it does not have to be done before being scheduled on the City Council agenda. They have .4 acre of wetlands that will be affected. This is the end of an area that was modified as part of the golf course and street construction. There is about a 5-acre site that is very low and will be open and maintained by the homeowners association where they can create additional wetlands for mitigation, if necessary. This is a fresh water low grade wetland which they will replace with some high grade wetlands which will filter water that goes back into one of the ponds on the golf course.

Hunzeker submitted his proposed amendments to the conditions of approval in writing.

Hunter was curious about the concern from staff with regard to the future use of that corner (the McKeeman property) if it should ever be purchased. She knows they are considering a gated community. She wonders if a stub ending into that property might be amenable. Hunzeker stated that their preference is to keep that access along Old Cheney Road, but the concern of the owner is a median in the future resulting in right-in right-out only. The alternative is for McKeeman to have access through the site, coming around to the northeast corner. This developer is willing to give him that access; however, he is not real excited about it in that there will be some grade differential. There are good trees in the southeast corner of the site and on Mr. McKeeman's property. It would be inconvenient for him to come through the development, but this developer is willing to do what McKeeman wants to do relative to access as long as it is a single family house. He currently has a driveway off Old Cheney Road. McKeeman is not sure what will happen to that driveway with the widening of Old Cheney Road. There will be a median at the

corner which will cover up his access and make it right-in right-out. He believes the City should buy his house and have it overwith.

Hunter understands that McKeeman is in posture to sell his property. Hunzeker believes the property is listed for sale. Hunter suggested that access could become a moot point if the property is purchased and turned into a corner development of some sort.

Steward asked Hunzeker to point out where they would propose to provide the easement for access to 88th Street. Hunzeker stated that they have not identified it specifically, but he pointed to 200' feet off of Old Cheney Road. All of the access throughout the site in one form or another accesses the parking lot. Their vision would be that in the event there is a median coming across their east entrance, they would still maintain that as the main entry point. But if eastbound on Old Cheney, there would be the opportunity to make a left turn and turn into the site. There is a road about 1/4 mi. north of Old Cheney that comes off of 84th Street along the golf course and he supposes, given the number of people who need to use it, it is probably not much worse than what First Federal will have on Cotner after O Street is widened.

Opposition

1. Mike McKeeman owns the house on the corner being referred to. The concern of his family is the access problem. They purchased the property 13 years ago and just wanted to live there, but everything is building up around them. He believes that they would have to access farther up on Old Cheney because of a median, which means they would have to come through this proposed development and he does not want to do that. He would consider a frontage road. They do have concerns about the future value of the property. If they allow it to happen in such a way so that they cannot sell the property for any kind of profit in the future, then they have defeated the economic value of their home. When this all came to be, he began to see the writing on the wall and began to think that they should try to sell and go somewhere else. The realtors believe that his residential property is devaluing. So that leaves the commercial possibility; however, it is not zoned for commercial. The only way to get out and reproduce what they have, would be to have commercial zoning. He is opposed because he will be stuck with no access. He understands Old Cheney will be widened and some of his property will be taken. He does not know what they will receive for this and no one is willing to tell him. He is surrounded by commercial to the south; behind him is all multi-family dwellings; and west will be commercial. If they cannot liquidate the property and they choose to live there, they will have to live under circumstances that will not be that great and will want to sell the property in the future as residential for profit. If that can't happen, they would like to look at other options.

Steward asked McKeeman whether, in his mind, he has had any discussions with this developer of any consequence about this developer purchasing his property and either allowing him to continue to live there for some date specific in the future or purchasing at

a circumstance which gives him the opportunity for economic replacement in some other location. McKeeman stated that he has been approached over the years but he didn't have any desire to move until he realized the dye had been cast. He believes this is a fine project but it just doesn't go well with his property. He does not believe the developer is interested in buying his property. That is why he sent a letter to the Planning Department hoping for a change in the Comprehensive Plan.

Steward asked McKeeman how he feels about the movement within the boundary of this development in order to get into his property. McKeeman stated that the median will extend up Old Cheney Road. It could work on up the road if the median does not extend that far, but he is not thrilled about driving all through the complex to get to his home. He does not want to cross someone else's property. He has discussed a frontage road for access, but he understands that that is not possible due to the way the land is designed. The only place they do not have buildings on their property is along Old Cheney Road. If he knew how much the city was going to pay for what they take, it would be helpful.

Hunter stated that it has been her experience that situations like this have made the property such as McKeeman's more valuable. She thinks it could turn out to be very positive as opposed to negative. She believes it is pretty handsome as far as future development with it being on the corner. McKeeman is not interested in not owning the property if he is going to live there.

Steward asked for discussion about the 240 versus 300 dwelling units. If 300 is permitted, why are we trying to restrict it to 240? Ray Hill of Planning staff explained that it has to do with the amount of land covered by buildings. Everything that is associated with reserving open space will be lost with the additional dwelling units and parking. Steward believes it is obvious that there is very little green space left other than down through the drainageway.

Steward inquired about the tree removal and replanting. Nicole Fleck-Tooze of Planning staff advised that there was a lot of information which was not included on the plans as to which trees would be removed and which would be preserved, but when overlaid on the grading plan it appeared that a great many of the trees would be removed. None of the proposed replanting is shown on the plans. Steward was concerned about the size of the trees and root bearing for flood protection.

Steward discussed the street configuration and traffic pattern. He asked how much flexibility, if any, the Commission has to try to accommodate the concerns of the corner lot. Buff Baker of Public Works clarified that this project does not take away the access from Lot 48 I.T. The existing access will operate until the time that 84th and Old Cheney are widened. Public Works does not have functional plans at this time for that widening. Public Works is trying to protect that property in the long term by asking for the access to 88th Street in case it does remainder residential. He estimated that the widening is 10 years out. The city will be taking islands through both directions of 84th and Old Cheney, which

will limit that access. When those islands do appear, there is the option that that property will still be granted a right-in and right-out movement at the existing location. The staff is attempting to look at long range protection for that property at this time.

Hunter pointed out that if the proposed development were not there, and the residence was there and Old Cheney was widened, McKeeman would be in the same position as he is now. Baker concurred. It would still remain a right-in right-out movement for that property.

Schwinn was surprised that the city does not have grades set at 84th & Old Cheney. Baker has not looked at the particular grade at that intersection but they cannot change it too much more than what it currently is. Access onto 84th Street would still be real difficult with the existing grade and any proposed grade. Schwinn wondered whether it would be dropped like 70th Street. Baker advised that the city has asked for 140' of right-of-way on both streets so they will chew up an additional portion of McKeeman's one-acre site which will make it less developable.

Hunter asked whether the waterway as shown on the proposed plan is where it currently exists. Fleck-Tooze advised that Antelope Creek has been left alone. There is a secondary drainage way up to the east and north which will have grading through the channel. The wetlands are associated with that secondary drainage. This development is outside of the channel with the exception of a street crossing. There are building structures, parking areas and grading throughout the 100-year floodplain; however, they are not showing any building structures in the floodway. There is a proposed pond and beach area within the floodway. It is not clear whether the trees are to be preserved or not in the upper portion. It appears the trees would have to be removed in the lower portion due to grading.

Taylor does not worship trees, but his concern is whether there is a way to make this thing look aesthetic and beautiful. We can make things artificially more beautiful but less durable and less practical. The riparian vegetation has a beauty of its own. He wants to know if there is a way that it could be preserved to do the job that it should and do other things aesthetically around it. Fleck-Tooze suggested that there are several options. We have discussed some of the aesthetic issues with preserving the natural vegetation during the stormwater regulation changes. The replacement of some of the trees on a site has been discussed but there has been nothing shown on the plans here to indicate that the trees will be replaced on a one-to-one ratio, etc.

Steward asked whether Fleck-Tooze is inferring that this development would not conform to the recently passed stormwater ordinance. Fleck-Tooze concurred.

Response by the Applicant

With regard to the McKeeman property, Hunzeker advised that this developer has actively pursued the possibility of acquisition of that property but it is very difficult to do. It is very hard for him to replace what he has at a price that makes sense for a residential use. He has been offered a considerable premium and the possibility of remaining on the property for an extended period of time, but it is hard to replace what he has even at a substantial premium, even assuming the ability to stay there. This developer is willing to provide him access. The difficulty with a frontage road is that the grades along Old Cheney Road are very difficult. There is no plan to widen Old Cheney at the point where Antelope Creek crosses it. So you've got a box culvert there that drops off right at the edge of the road and to put in a frontage road would be almost impossible and would involve making improvements that would inevitably be torn out within just a short period of time.

Public Works has told this developer that there is no way they can have access to 84th.

With regard to the density, Hunzeker pointed out that this site is somewhat spread out. The buildings are not the typical three-story box that you see all around town. They are two-story on the ends; three-story in the middle; and there are as many individual access doors to individual units as possible. This is an attempt to create something that is different from the standard 2-3 story box with center hallways. Yes, it would be possible to build bigger taller structures and park in the floodplain. It is also very, very ordinary and very, very unaesthetic in the sense that the buildings will not be the kind designed for this project.

Hunzeker believes this developer has submitted a landscape plan which far exceeds the existing design standards and is only about half of what they intend to do. The only reason they have not included every tree and shrub that they intend to plant is because they would end up having to modify the landscape plan and go through another administrative process every time there was a minor change. This developer has access to excellent trees. The owners of the property selling to this developer have a tree farm less than a mile from this location. There is every intention of this developer to reforest this site in a way that will make it very, very aesthetically pleasing.

Hunzeker agreed that this developer is putting some fill in floodplain areas. The drainageway that has wetlands in it is now on the site of the roadway which exists and has been filled and is at the end of a tube running under that street which drains a portion of the golf course. It is not as if this area has not already had some manipulation. It has been planned for that. This CUP was approved prior to anybody even putting the new regulations on the table. We didn't have the opportunity to plan that entire CUP around the new regulations. What we have done is made computations which prove that what we are leaving untouched will convey the 100-year storm; will not adversely affect other property; and the detention cells which are north of this property on the golf course are sufficient to detain the stormwater in accordance with the design standards. While it is true that they are filling some floodplain, they are retaining sufficient area to detain that storm in detention cells in accordance with design standards. He believes the results will be

better than if the property is left alone.

Hunter asked whether the contention that the 100 year flood would be handled is according to an engineering study. Hunzeker indicated that the original computations were done by Olsson Associates and one of the requirements is that they provide a certification (Condition #1.1.15) signed by a qualified engineer indicating that the proposed

development and grading within the floodway will cause no increase in the 100-year flood elevation. This is applying a no net rise standard where a no net rise standard simply does not exist. They will agree to comply, even though it is not required by ordinance.

Hunzeker also observed that one of his proposed amendments would require that they identify the trees that would be retained. Hunzeker would not commit to a one-to-one mitigation ratio. Less than 10% of what is there is worthy of any effort to preserve it.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 26, 2000

Duvall moved approval, with conditions, including the amendments requested by the applicant, seconded by Krieser.

Steward moved to amend to retain Condition #1.1.20 at 240 dwelling units, seconded by Hunter. Steward believes this condition is the root of all of his other concerns and apprehensions, except for one. It is clear, just intuitively without going through the calculations, that one of the reasons that the developer needs and wants more flexibility on the vegetation is because they are having to shape and change the entire site in order to accommodate the proposed density. It is being over-designed. He thinks there is an attempt to get more units than the site should be asked to carry. If there was less density there would be the need for less land forming, and less land forming would give the opportunity to preserve more of the vegetation. He agrees with the staff recommendation to not change the density.

Schwinn is against the motion to amend. Staff would probably go for the 300 if they redesigned the buildings without as large a footprint. As we look into our smart growth issues and urban planning for the future, we have asked for higher densities on parcels that are being used in rental situations to create more open space. This project has open space through the very center. The density is well below what it should be. Maybe we should raise the density beyond 300 to make proper use of the whole section of ground. He believes that what the developer is trying to do is somewhat of a new concept for Lincoln. If people do not like the rental unit they have the option to move out. The developer is willing to gamble that this concept will work. He saw this type of project all over in Dallas.

Duvall believes the density is quite low and this is the direction we are trying to move.

Steward further commented that new urbanism also respects the landscape and respects the context in which it is placed. Density is not an excuse or reason to promote new urbanism. There are areas in this city that should have higher density. But this community is in the process of speaking about flood control and stormwater conditions and this project is close enough to that principle. How can we come along on the heels of that decision and approve something that does not conform?

Hunter has seen a tremendous number of these gated type communities. It is something new to Lincoln but they are usually very beautiful in terms of what they do for the community in creating community environments. She is torn. She heard that this development is being designed to handle the 100-year storm and that the water is being channeled through there in the most normal path that it was before with some fill on the sides, but the 100-year flood water is still being managed. This is an issue to her but she thinks this development is set up to handle it. Duvall noted that Olsson Engineering has certified to that issue.

Taylor's concern is fair treatment. It sets a precedent. He believes that we have to take it one step at a time. We want to improve the situation rather than make it worse.

Motion to amend Condition #1.1.20 to retain 240 dwelling units failed 3-4: Taylor, Newman and Steward voting 'yes'; Duvall, Hunter, Krieser and Schwinn voting 'no'; Bayer and Hopkins absent.

Taylor made a motion to retain the staff language in Condition #1.1.19, seconded by Steward. Schwinn noted that this would require the developer to identify every little seedling on the property. Ray Hill of Planning staff explained that the reason they are being asked to identify the trees that are removed is so that we know what trees have been removed from the site. Staff will work with the applicant as to the size of the tree to be identified. We would probably be talking about one inch in diameter as the minimum size. There is a standard as to size and height.

Steward does not believe we are asking the developer to count every seedling or shrub. Steward suggested that the applicant be required to identify the trees on the site that are 3" caliper or above that they propose will be removed. This became the motion to amend Condition #1.1.19. Motion carried 4-3: Steward, Newman, Taylor, and Schwinn voting 'yes'; Duvall, Hunter and Krieser voting 'no'; Bayer and Hopkins absent.

Discussion on main motion, as amended. Newman shares Steward's concerns. 300 is too many. She also hesitates to endorse gated communities.

Steward believes the variation of the building units would be very attractive but there are too many and the footprint is taking up too much of the site. In spite of attractive gated

communities, he does not believe they make a good community. It separates and distinguishes and he does not think Lincoln needs to go down that path. His biggest concern is the corner lot situation of economic taking. Because of the power of the economics of this development, there is one lone individual landowner being left without the options that he desires for his property. How is it that just because of this circumstance that he can be pushed out of his preference to be there? Steward will vote against the project.

Taylor believes in everyone making a buck and it looks like we have to choose between a gentleman and the developer. He is not very comfortable with that. He likes the idea of the development and the concept, but he just cannot leave Mr. McKeeman out for that. If there was a way to handle the situation better, then he would feel better about it.

Hunter believes there is a huge misconception about gated communities because if you think there is a guard with a gun, it's not like that. It is predominately something that basically takes communities like Colonial Hills and puts restriction on traffic flowing through the development like a major street. It is more of an aesthetic thing than anything else. For the purpose of bringing a new development and a very handsome community, she believes we have to consider all of the issues. This isn't the first development to go in that area. She thinks it was probably unfortunately just a matter of time. She would like to own the corner property because she believes it gets extremely valuable with whatever is built up around it. She could see it becoming a commercial corner.

Duvall believes this is an absolutely tremendous project. It is a real feather in Lincoln's hat to see something of this caliber. We can learn a lot from it.

With respect to the corner property, Schwinn pointed out that the CUP was done on this property in 1998. The property owner chose not to be involved in the CUP at that time. He has been approached again and has chosen not to be involved. Maybe there is more here than what we see. We need to take that into consideration. The developer could go on around him as it sits now with the R-3 zoning. He is on the corner of a major intersection that will become an even more major intersection in the future. He believes that since McKeeman has not been involved in the last two years, it is not the Planning Commission's concern as to what to do.

Taylor stated that with that information, he will change his mind.

Main motion, with amendment to Condition #1.1.19, carried 5-2: Duvall, Hunter, Krieser, Taylor and Schwinn voting 'yes'; Steward and Newman voting 'no'; Bayer and Hopkins absent.

There being no further business, the meeting was adjourned at 4:45p.m.

Please note: These minutes will not be formally approved until the next regular meeting

of the Planning Commission on February 9, 2000.

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